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 Apple Inc.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 ELAN MICROELECTRONICS
 14 CORPORATION,

Plaintiff and Counterclaim
 Defendant,

16 v.

17 APPLE INC.,

Defendant and Counterclaim
 Plaintiff.

Case No. C-09-01531 RS (PSG)

**APPLE INC.'S MOTION FOR LEAVE
 TO SUBMIT A SURREPLY
 MEMORANDUM IN OPPOSITION TO
 ELAN MICROELECTRONICS
 CORPORATION'S MOTION FOR
 PARTIAL SUMMARY JUDGMENT OF
 INFRINGEMENT OF U.S. PATENT
 5,825,352**

DATE: July 14, 2011
 TIME: 1:30 p.m.
 JUDGE: Hon. Richard Seeborg
 CTRM: 3, 17th Floor

1 Defendant Apple Inc. (“Apple”) hereby moves for leave to submit a short (11-page)
2 surreply memorandum in opposition to Elan Microelectronics Corp.’s (“Elan”) Motion for Partial
3 Summary Judgment of Infringement of U.S. Patent 5,825,352. As grounds for this Motion, Apple
4 states that on May 5, 2011, Elan filed a motion for partial summary judgment of infringement,
5 which Apple opposed. Then, on June 16, 2011, Elan filed a reply in support of said motion which
6 among other things:

- 7 • Relies upon a new, twenty-six page expert declaration containing new opinions
8 based on new evidence never cited in Elan’s opening brief;
- 9 • Relies upon fifteen new exhibits never cited in Elan’s opening brief;
- 10 • Requests that the Court “revisit” a claim construction issue for the first time in a
11 reply brief on summary judgment based on new arguments and evidence never
12 presented during the prior claim construction proceedings or even in Elan’s
13 opening summary judgment brief;
- 14 • Contains a variety of new arguments that are factually and legally erroneous; and
- 15 • Repeatedly mischaracterizes Apple’s positions.

16 In addition, on July 5, 2011, Elan filed another supplemental expert declaration containing
17 additional opinions, and relying on another new exhibit.

18 Apple objects to Elan’s reliance on new evidence and arguments for the first time in reply
19 and after reply. However, should the Court be inclined to consider them, given the importance of
20 the issues, Apple respectfully requests that this Court enter an Order permitting it to file the
21 surreply memorandum submitted under seal concurrently herewith to elucidate the issues for the
22 Court.

23
24 Dated: July 6, 2011

WEIL, GOTSHAL & MANGES LLP

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26 By: /s/ Jared Bobrow
27 Jared Bobrow
28 Attorneys for Defendant and
Counterclaim Plaintiff Apple Inc.